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General Counsel-South Carolina

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2005 FEB 10 PM 4:36
SC PUBLIC SERVICE
COMMISSION

February 10, 2005

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

2/13/04
too

Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C

Dear Mr. Terreni:

Enclosed for filing are an original and ten copies of BellSouth's Response to Petition for Clarification and Further Guidance in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this response as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
DM5 # 621189

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FEB 13 2006

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RETURN DATE: N/A
SERVICE: OK too

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

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2006 FEB 10 PM 4:36
SC PUBLIC SERVICE
COMMISSION

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,)	
NuVox Communications, Inc.)	Docket No. 2005-57-C
KMC Telecom V, Inc., KMC Telecom III LLC, and)	
Xspedius Communications, LLC on Behalf of its)	
Operating Subsidiaries Xspedius Management Co.)	
Switched Services, LLC, Xspedius Management Co.)	
Of Charleston, LLC, Xspedius Management)	
Co. of Columbia, LLC, Xspedius Management Co.)	
Of Greenville, LLC, and Xspedius Management Co.)	
Of Spartanburg, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	
)	

**BELLSOUTH'S RESPONSE TO
PETITION FOR CLARIFICATION AND FURTHER GUIDANCE**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Response to the "Petition for Clarification and Further Guidance" that the Joint Petitioners filed in this docket on January 27, 2006.

I. The Commission Should Rule on Any Objections That May Be Presented During the Hearing Currently Scheduled for March 23, 2006.

The Commission's Order Denying Motion to Overrule and Advising the Parties as to Admissibility of Certain Testimony states that "a hearing shall be set in this matter for the Commission to receive testimony, hear arguments, and rule on evidentiary and procedural matters as necessary." Order at 8. The Commission has not yet made any

ruling on the admissibility of the testimony the Joint Petitioners are seeking to admit into the record of this proceeding. Instead, it will make such rulings, if necessary, during the hearing, which currently is scheduled for March 23, 2006.¹

In light of this, BellSouth respectfully submits that no action by the Commission is necessary prior to that hearing. If the Commission decides to take any action prior to that hearing, however, BellSouth respectfully requests that the Commission maintain these dates for the hearing and for the filing of briefs and proposed orders. This matter needs to be resolved as soon as possible because the parties need to begin operating under a new interconnection agreement in South Carolina as soon as possible.

II. The Joint Petitioners Have Merely Restated Arguments That They Have Previously Presented And That Are Demonstrably Wrong.

In their Petition, the Joint Petitioners repeatedly ask the Commission to “explain” itself to them. For the reasons indicated above, BellSouth does not believe it is necessary for the Commission to do so. Additionally, for all of the reasons BellSouth has presented in its oral and written submissions in this docket, the guidance set forth in the Commission’s Order on the conflict of interest issue is solidly grounded in both fact and law. Rather than repeating those reasons in detail in this Response, BellSouth respectfully incorporates its prior submissions by reference and offers the following brief points for the Commission’s consideration as it decides how to address the Petition.

First, to the extent the Commission deems it appropriate to consider the affidavit of John P. Freeman that the Joint Petitioners submitted, BellSouth respectfully requests that the Commission also consider the attached affidavit of Dr. Gregory Adams, which supports the guidance provided by the Commission.

¹ See Order Adopting Proposed Schedule (February 8, 2006).

Second, the fact that BellSouth's witnesses asked the Commission to rule in favor of BellSouth and against NuVox (*see, e.g.*, Petition at 2, 5) has no bearing on the merits of the Commission's guidance for the following reasons: (a) BellSouth's witnesses were not simultaneously employed by both BellSouth and a representative of NuVox, nor did they otherwise owe any professional duties to NuVox or the Joint Petitioners; (b) NuVox's decision not to object to the testimony of BellSouth's witnesses was not swayed or altered by any failure of those witnesses to disclose material facts that formed the basis for an objection; and (c) BellSouth's witnesses are not attorneys to whom the Rules of Professional Conduct apply.

Third, in addressing the matter of prejudice, Professor Freeman's affidavit relies on two older cases, but it does not address the more recent decision of the South Carolina Supreme Court in *State v. Gregory*, 612 S.E.2d 449 (S.C. 2005).² Notably, the affidavit does not address the fact that the public's confidence in the Commission's administration of justice would be severely compromised if parties to Commission proceedings were faced with the prospect of appearing before the Commission and having a member of a firm that has represented them for decades show up and ask the Commission to rule for the other side.


² In *Gregory*, which is discussed in detail at page 15 of BellSouth's Reply to Response to Motion to Strike, the Supreme Court overturned the trial court's decision not to disqualify an attorney with a conflict of interest. Although the defendant had not shown that he was prejudiced and the attorney had not done anything inappropriate, the Supreme Court disqualified the attorney with the conflict. In doing so, the Court stated that the defendant was not required to demonstrate prejudice in order to have the attorney disqualified.

Finally, the Joint Petitioners continue to suggest that this is an issue that should be presented to a disciplinary authority (*see, e.g.*, Petition at p. 1). BellSouth has not done so for two reasons. First, this issue arose before the Commission and affects the public's perception of the conduct of Commission proceedings, and it is therefore appropriate for the Commission to have the first opportunity to address this important matter. Second, BellSouth has consistently approached this situation as though it arose as a result of mistake and not intentional conduct. Even if BellSouth were faced with intentional misconduct requiring reporting to the appropriate disciplinary authorities, the Commission would still be faced with the issue of whether to allow such intentional misconduct in proceedings it conducts. The importance of ensuring continued public confidence in the conduct of Commission proceedings might be heightened if disciplinary proceedings were pending, and the Commission might have greater, not less, reason to prohibit the improper testimony.

These points clearly support the guidance provided by the Commission in its Order.

Respectfully submitted, this 10th day of February, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.



PATRICK W. TURNER
Suite 5200
1600 Williams Street
Columbia, South Carolina 29201
(803) 401-2900

ATTACHMENT

**AFFIDAVIT OF
DR. GREGORY
ADAMS**

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE
STATE OF SOUTH CAROLINA

In the Matter of	}	
	}	
Joint Petition for Arbitration of	}	
NewSouth Communications Corp.,	}	
NuVox Communications, Inc.	}	Docket No. 2005-57-C
KMC Telecom V, Inc., KMC Telecom III LLC, and	}	
Xspedius Communications, LLC on Behalf of its	}	
Operating Subsidiaries Xspedius Management Co.	}	
Switched Services, LLC, Xspedius Management Co.	}	
Of Charleston, LLC, Xspedius Management	}	
Co. of Columbia, LLC, Xspedius Management Co.	}	
Of Greenville, LLC, and Xspedius Management Co.	}	
Of Spartanburg, LLC	}	
	}	
Of an Interconnection Agreement with	}	
BellSouth Telecommunications, Inc.	}	
Pursuant to Section 252(b) of the	}	
Communications Act of 1934, as Amended	}	

AFFIDAVIT OF EXPERT OPINION OF DR. GREGORY B. ADAMS

PERSONALLY APPEARED BEFORE ME Gregory B. Adams, who, being duly sworn, states:

1. I have been retained as an expert consultant by Patrick W. Turner, Esq., General Counsel – South Carolina, BellSouth Telecommunications, Inc., to review the facts of this case, to examine the issues of professional and ethical duties of lawyers raised by those facts, and to provide relevant opinions within my expertise. I was initially consulted by Mr. Turner as a consulting expert in June 2005 to assist him in correctly analyzing the issues raised by the voluntary testimony of Hamilton Russell, Esq. against BellSouth concurrent with representation of BellSouth by his law firm, Nelson Mullins Riley & Scarborough LLP, in other matters.

2. Since the late 1970s I have been a law professor at the University of South Carolina School of Law, where I specialize in legal and judicial ethics and business law. I have served as an expert witness countless times and have been held qualified by the South Carolina Supreme Court and Court of Appeals as well as Circuit Judges and United

States District Judges. My resumé, summarizing my professional qualifications as a law professor and my experience and qualifications as an Expert Witness, is attached as Exhibit A.

3. In reaching my expert opinions, I have relied upon the types of evidence, factual sources, and legal authorities usually relied upon by experts in the field of legal ethics and professional responsibility.
4. The expert opinions I express in this affidavit are consistent with the opinions I have given BellSouth, through Mr. Turner, during the course of his consultations with me beginning in 2005.
5. I hold these expert opinions to a reasonable degree of professional certainty:
 - a. Allowing Hamilton Russell, Esq. to provide voluntary testimony in these proceedings as an advocate for and representative of NuVox against BellSouth while his law firm is simultaneously representing BellSouth in other matters would permit unethical behavior and violation of the professional and fiduciary duties of Mr. Russell to BellSouth; it is perfectly proper and entirely appropriate for the Commission to decline to countenance such intentional misconduct.
 - b. The South Carolina Rules of Professional Conduct create legal standards – duties and prohibitions – that govern South Carolina lawyers in their professional, business, and personal lives. Although the primary uses of these Rules are to provide ethical guidance to lawyers and law firms and to establish the standards determining when lawyers may be professionally disciplined and their licenses suspended or revoked, South Carolina state and federal courts, like courts throughout the United States, use the Rules to determine how to properly resolve a myriad of problems created when lawyers violate, or are alleged to have violated, their duties under the Rules.
 - i. For example, the South Carolina Supreme Court has agreed with my expert opinion that it is proper to use a lawyer's violation of a provision in the Rules to establish a violation of the lawyer's duties to a client and resulting civil liability for malpractice. *See Smith v. Haynsworth, Marion, McKay & Guerard*, 322 S.C. 433, 472 S.E.2d 612 (1996).
 - ii. Courts have used the Rules to establish the standards for disqualifying lawyers for engaging in impermissible conflicts of interest as well as for determining whether a lawyer is entitled to collect a fee from a client, co-counsel, or successor counsel. An obvious example of this is the use of Rule 1.9 as the standard to be applied in ruling on motions by a former client to disqualify former counsel who is representing an opponent of the former client in litigation related to the prior representation. *See, e.g.* In re

- Westmoreland, 353 S.C. 44, 577 S.E.2d 209 (2003) (holding attorney had violated Rule 1.9 and simultaneously affirming circuit court order disqualifying him in the underlying civil action).
- iii. The Preamble to the Rules does not prohibit such uses, but merely cautions tribunals when enforcing the Rules in litigation to be sensitive to the possibility that the Rules are being invoked to obtain a tactical advantage rather than in a genuine desire to protect the client's rights to the loyalty of current counsel or maintenance of confidentiality by its current or former counsel.
- c. As the Commission has correctly realized, advocacy by Hamilton Russell, Esq. in favor of NuVox and the joint petitioners, directly against the interests of his law firm's current client, BellSouth, would be improper and should not be allowed. As a review of the actual "testimony" of Mr. Russell reveals, it is overwhelmingly advocacy, such as is commonly provided by counsel appearing on behalf of a party, and not fact testimony, such as witnesses provide. Indisputably, his role is advocate not factual witness; he only briefly, in passing, mentions facts when arguing for his client, NuVox. The examples in the transcripts are legion, as the Commission will realize, but a few will prove Mr. Russell to be advocating not testifying factually:
- i. "I'm here **on behalf of** NuVox Communications." Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South Carolina, June 1, 2005 Hearing Before the Public Service Commission of South Carolina, June 1, 2005, Tr. v.1, p.198, ll.8-9 (emphasis added).
 - ii. "This is an issue that has important business implications for NuVox and Xspedius. Here **we are seeking** to replace BellSouth's standard limitation of liability provision with one that is commercially reasonable. **Our proposal is** that liability for negligence should be limited to an amount equal to 7.5% of the amount billed for services provided under the Agreement as of the day the claim arose. **BellSouth's negligence and other non-performance should be part of BellSouth's cost of doing business**, not the cost of doing business of the CLECs. **We should not be forced to accept** unlimited financial risk in the event of BellSouth's negligence." Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South Carolina, June 1, 2005, Tr. v.1, p.198, l.17 – p.199, l.3 (emphasis added).
 - iii. "Issue 5 is about whether BellSouth can, essentially, dictate the terms of **our tariffs and customer service agreements** or demand indemnification if the terms that **we agree to with our customers** do not mirror those found in BellSouth's standard tariff offerings." Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South

- Carolina, June 1, 2005, Tr. v.1, p.199, ll.4-9 (emphasis added).
- iv. “we have no obligation to ensure BellSouth that we will do so as we compete against BellSouth when negotiating terms in competing customer service agreements. We also will not indemnify BellSouth in the event that any suit is based on BellSouth's negligence, gross negligence or willful misconduct or its failure to abide by applicable law. **BellSouth must not be permitted to force the Joint Petitioners**” Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South Carolina, June 1, 2005, Tr. v.1, p.199, ll.12-19 (emphasis added).
- v. “BellSouth **should be responsible** for reasonably foreseeable damages directly and proximately caused by BellSouth, including to South Carolina businesses, consumers, and your constituents.” Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South Carolina, June 1, 2005, Tr. v.1, p.200, ll.1-4 (emphasis added).
- vi. “Issue 7 is about whether the **heavy-handed, one-sided indemnification provisions proposed by BellSouth** should be replaced with commercially, reasonable provisions. **We propose that** [NuVox and the other Joint Petitioners be indemnified by BellSouth].” Testimony of Hamilton Russell, Hearing Before the Public Service Commission of South Carolina, June 1, 2005, Tr. v.1, p.200, ll.5-8 (emphasis added).
- vii. “Q. What is the purpose of your testimony? **A. The purpose of my testimony is to offer support for the CLEC Position . . . by rebutting the testimony provided by various BellSouth witnesses.**” Testimony of Hamilton Russell, Rebuttal Testimony of the Joint Petitioners, May 23, 2005, p.6, ll.5-8 (emphasis added).
- viii. “Q. Does BellSouth provide any legitimate justification to support its insistence on a restrictive definition of end user?
A. No. **BellSouth has no legitimate justification for insisting on a** definition of End User which it then seeks to use throughout the Agreement in a manner that could be interpreted to artificially limit its obligations and restricts Joint Petitioners' rights. **BellSouth's position is belied by the fact that** the Parties agree to treat ISPs as End Users in Attachment 3 of the Agreement and that the industry has treated them as End Users for more than 20 years. ... **Our negotiations with BellSouth revealed that BellSouth had sought to use its definition to attempt to inappropriately curb Joint Petitioners' right** to use UNEs as inputs to their own wholesale service offerings. **There is no sound legal or policy foundation for BellSouth's position.**” Testimony of Hamilton Russell, Rebuttal Testimony of the Joint Petitioners, May 23, 2005, p.11, l.8 – p.12, l.1 (emphasis added).
- ix. “**Our definition is not intended** to restrict or expand our right to use

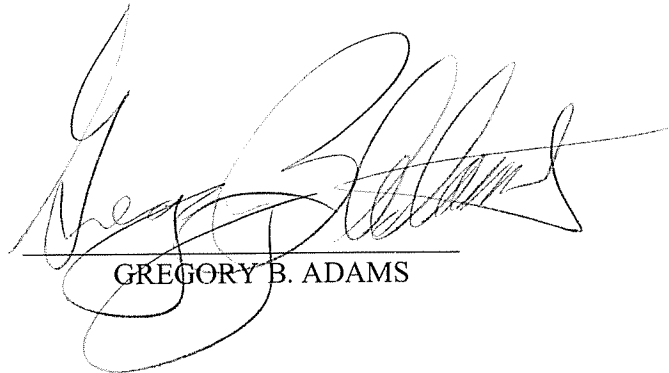
- UNEs (and we will agree to put language in the Agreement that says **just that**).” Testimony of Hamilton Russell, Rebuttal Testimony of the Joint Petitioners, May 23, 2005, p.12, ll.12-14 (emphasis added).
- x. “**From a legal perspective**, BellSouth's newly proposed definitions, if used or construed improperly, could unlawfully restrict the manner in which Joint Petitioners use UNEs. ... Moreover, ... **there is no apparent ‘legal or policy basis to support BellSouth's apparent attempt** to limit [NuVox’s customers and services]’ ... stifling competition in South Carolina. Accordingly, **the Commission should adopt** the definition proposed by the Joint Petitioners” Testimony of Hamilton Russell, Rebuttal Testimony of the Joint Petitioners, May 23, 2005, p.13, l.16 – p.14, l.8 (emphasis added).
- d. This is not compelled testimony of a factual witness who has a civic duty, enforceable by subpoena and the tribunal’s contempt power, to testify to the facts he knows; this is voluntary testimony like the compensated testimony of an expert witness, but without even the pretense of impartiality, instead consisting almost exclusively of sheer advocacy, asserting the positions of NuVox and the other Joint Petitioners and arguing against the positions of his law firm’s client, BellSouth. It would be the height of absurdity to elevate form over substance, concluding that, technically, Mr. Russell is merely a witness and not an advocate. If that were so, it would logically follow that any of the Nelson Mullins lawyers actually working on BellSouth matters now could properly “testify” against BellSouth in these proceedings as Mr. Russell is being requested to do by Joint Petitioners.
- e. Under South Carolina law, actual prejudice need not be proven by BellSouth because Mr. Russell has an actual, not merely a potential, conflict of interest. *State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005). Professor Freeman does not mention the *Gregory* case in his affidavit, but relies on cases from 10 or 20 years ago, citing them in an entirely different context as supporting a proposition for which they do not stand,¹ rather than being guided by the recent decision of our Supreme Court holding that prejudice need not be shown by a client when the

¹ Both cases he cites are criminal appeals asserting violation of constitutional rights and therefore subject to the harmless error rule, which requires showing prejudice. Additionally, *Chisholm* did not involve a conflict of interest of any kind and *Smart* involved a former client conflict. Finally, *Smart* is of doubtful continued vitality (even as to those points on which it has not been expressly overruled) under the Rules of Professional Conduct (see S.C. Ethics Advisory Opinion 93-03, noting that *Smart* was decided under the Code of Professional Responsibility and reaching a different result under the Rules) and in the face of the Supreme Court’s 2005 holding in *Gregory*.

attorney is subject to an actual conflict, as Mr. Russell would be in this case. Additionally, BellSouth has shown it would suffer actual prejudice, which is quite obvious: one of the lawyers of its current law firm, Nelson Mullins, is being requested by Joint Petitioners to vigorously advocate against BellSouth's interests, speaking on behalf of a party directly adverse to it. This interest is precisely one of the two primary interests protected by Rule 1.7.

- f. Under Rule 1.10 of the South Carolina Rules of Professional Conduct, if any lawyer in a firm is prohibited by Rule 1.7 from representing a party in a matter all of the lawyers in the firm are forbidden to appear on behalf of that party in that matter. BellSouth is currently a client of Nelson Mullins (and has been throughout these proceedings, including the times at which Mr. Russell has proffered testimony after joining the firm). The Nelson Mullins lawyers who are representing BellSouth in those matters could not appear voluntarily in these proceedings "on behalf of NuVox" – as Mr. Russell's proffered testimony states he is being asked to do; it would not matter whether they were compensated for their appearance or not. Under Rule 1.10, the situation in this case is the same as if Mr. Russell were testifying against BellSouth while simultaneously representing it in other matters. The Commission is correct in not wanting to approve or consider such unethical advocacy.


FURTHER AFFIANT SAYETH NOT.



GREGORY B. ADAMS

SWORN TO BEFORE ME THIS

10 DAY OF February 2006



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/27/2012

DR. GREGORY B. ADAMS

University of South Carolina School of Law
Columbia, S.C. 29208

Professional Experience

Law Professor (tenured), University of South Carolina, 1978–present
SUBJECTS TAUGHT: Professional Responsibility; Judicial Ethics; Legal Profession;
 Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited
 Liability Companies; Antitrust; International Business Law; European Union Law
 Founding Director, Program on Judicial Ethics, Selection, Accountability, and
 Independence, University of South Carolina School of Law (2003–present)
 Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001
 Visiting Professor of Law, University of Southampton, Southampton, England,
 Fall 1989
 Visiting Professor of Law, Rutgers University, Newark, NJ, 1983–1984
 Stagiaire, Commission of the European Communities (European Union),
 Brussels, Belgium, 1979
 Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979
 Visiting Scholar, Faculté de Droit, Université Catholique de Louvain,
 Louvain-la-Neuve, Belgium, 1978
 Jervy Fellow in Foreign Law, Parker School, Columbia University, 1977–1979
 Assistant Professor, Southern University School of Law, 1975–1977
 Consultant, Louisiana Legislative Council, 1976–1977
 Attorney with Breazeale, Sachse & Wilson, Baton Rouge, LA, 1973–1975

Education

J.S.D.	1986
<i>Columbia University School of Law</i>	<i>New York, New York</i>
Dissertation: Control of Monopoly Power in Europe and the United States	
LL.M.	1979
<i>Columbia University School of Law</i>	<i>New York, New York</i>
Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal	
J.D.	1973
<i>Louisiana State University Law Center</i>	<i>Baton Rouge, LA</i>
Order of the Coif; Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.	
B.S.	1977
<i>Louisiana State University</i>	<i>Baton Rouge, LA</i>
Phi Kappa Phi	
<i>College of Arts & Science</i>	1966–1968
<i>Vanderbilt University</i>	<i>Nashville, TN</i>

Honors and Recognition

Louisiana State University Law Center Hall of Fame
Who's Who in the World
Who's Who in America
Who's Who in American Law
Who's Who in American Education
Who's Who in the South and Southwest
Who's Who of Emerging Leaders in America
Who's Who in Law Education
Dictionary of Int'l Biography (Cambridge, U.K.)
Smith v. Haynsworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996)
(holding GBA qualified as an expert witness; reversible error to rule otherwise)
Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (S.C. Ct. App., 2004) (holding it was
reversible error to discount GBA's expert opinion and fail to give it efficacy)
Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App., 1989) ("excellent discussion
of the ramifications of these statutes" by GBA in "Litigation of Corporate Law Disputes
After the Recent Amendments of the Corporate Code," in Current Issues in Civil
Litigation, a South Carolina Bar Continuing Judicial Legal Education Seminar 4/14/89)

Publications

South Carolina Corporate Practice Manual (2nd ed. 2005, S.C. Bar) (with
Burkhard, Cleveland, Clark, Hellwig, Merline).
"Reflections on the Reactions to Proposed Rule 8.5: Consensus of Failure," 36 S. Texas
Law Review 1101 (1995).
"Introductory Remarks to the Conference on the Commercialization of the Legal
Profession," 45 S.C. L. Rev. 883 (1994) (with Nathan M. Crystal).
Report of the Proceedings, Conference on the Commercialization of the Legal
Profession (with Nathan M. Crystal): "Summary of Discussion of Frankel Paper,"
45 S.C.L. Rev. 901 (1994); "Summary of Discussion of Palay/Galanter Paper,"
45 S.C.L. Rev. 929 (1994); "Summary of Discussion of Martyn Paper," 45 S.C.L.
Rev. 961 (1994); "Summary of Discussion of Dimitriou Paper," 45 S.C.L. Rev.
999 (1994).
"The Ethical Lawyer," occasional column in the S.C. Trial Lawyer Bulletin since 1994.
"Suing Corporations and Those Behind Them," 1992 S.C. Trial Lawyer Bulletin 17.
South Carolina Corporate Practice Manual (S.C. Bar, 1989) (with Cleveland, Burkhard,
McWilliams).
"European and American Antitrust Regulation of Pricing by Monopolists,"
18 Vanderbilt Journal of Trans. Law 1 (1985).
"Antitrust Constraints on Single-Firm Refusals to Deal by Monopolists in the European
Economic Community and the United States," 20 Texas Int'l L. J. 1 (1985).
"The 1981 Revision of the South Carolina Business Corporation Act," 33 S.C. L. Rev.
405 (1982).
"Inheritance Taxation of Trusts," in 11 L. Oppenheim & S. Ingram, Louisiana Civil Law
Treatise, Trusts (1977).

Public Service

Member, S.C. Bar, Professional Responsibility Committee, 1993-present (chair or member of numerous subcommittees, including Ethics 2000 Subcommittee; presented Ethics 2000 recommendations to S.C. Bar House of Delegates).

Member, S.C. Bar, Unauthorized Practice Committee, 1994, 2000-2003.

Member, S.C. Bar, Technology Committee, 1996-1998.

Ethics Consultant, South Carolina Trial Lawyers Association, 1994-present.

Founder and Vice-President, South Carolina Association of Ethics Counsel, 2000-present.

Expert Witness and advisor to the South Carolina Attorney General in the criminal investigation and prosecutions for securities fraud in connection with the failure of Carolina Investors and HomeGold Financial, 2003-2005.

Expert Consultant for the South Carolina Department of Health and Environmental Control, re: piercing the corporate veil to impose environmental liability under CERCLA, 1997-1999.

Reporter, South Carolina Uniform Commercial Code Article 2A (South Carolina Law Institute for the South Carolina General Assembly, 1996-2001).

Expert Witness and advisor to the South Carolina Attorney General in criminal prosecution of John O'Quinn, Esq. for unauthorized practice of law and illegal solicitation, 1996-1997.

Co-Reporter, Conference on the Commercialization of the Legal Profession, Charleston, S.C., May 28-29, 1993.

Expert Witness for the United States before the Federal Grand Jury investigating securities fraud, May 1993.

Member, Governing Board, Center for Law, the Legal Profession, and Public Policy, 1991-93, 1998-2000.

Member, Blue Ribbon Committee on Corporate Law, South Carolina Secretary of State, 1991-1995.

Securities Law Expert for the South Carolina Attorney General in connection with the bankruptcy of Patriots Point Associates, 1989-91.

Advisor to the S.C. Deputy Securities Commissioner and the S.C. Senate Judiciary Committee on Corporate Law issues.

Co-Reporter, South Carolina Business Corporation Act of 1988 (South Carolina Law Institute for the South Carolina General Assembly, 1986-88).

Member, Louisiana State Law Institute, Civil Code Revision Committee, 1975-1977

Presentations

"Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, Richland County Bar Association (11/5/04).

"Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Charleston, S.C. (8/18/04).

"The New S.C. Lawyers' Oath," C.L.E. Seminar, S.C. Bar, Charleston, S.C. (6/25/04).

"Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Columbia, S.C. (4/23/04).

"Ethics 2000 and Lawyers' Fees," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel, Columbia, S.C. (11/15/03).

"The Ethical Implications of *Brown v. Bi-Lo*," S.C. Workers Comp. Educational Ass'n

- Educational Conference, Kingston Plantation, Myrtle Beach, S.C. (10/20/03).
- "Ethics 2000: The New Rules of Professional Conduct & Multi-Jurisdictional Practice of Law," C.L.E. Ethics Seminar, Investors Title Insurance Company Seminars (9/17/03 Rock Hill) (9/12/03 Hilton Head Island).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/8/03).
- "Political & Legal Ethics: The Pitfalls to Avoid," C.L.E. Ethics Seminar, S.C. Bar Annual Convention (Young Lawyers Division) (1/24/03).
- "Recent Developments in Legal Ethics," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel (12/14/02).
- "Current Ethical Issues in Real Estate Practice," C.L.E. Ethics Seminar, Security Title Insurance Company (11/8/02).
- "Ethics of Attorney's Fees for Domestic Law Attorneys," C.L.E. Ethics Seminar, S.C. Bar (9/20/02).
- "Discovery Abuse and Litigation Ethics," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/3/02).
- "Discovery Abuse, Litigation Ethics, Supervision and Other Horrors," C.L.E. Ethics Seminar, S.C.T.L.A. Conv. (8/2/02).
- "Ethical Issues in Attorney Marketing Under the Amended Rules," C.L.E. Ethics Seminar, S.C. Bar (7/26/02).
- "Ethics in the Practice of Criminal Law," C.L.E. Ethics Seminar, S.C. Bar (5/10/02).
- "Professional Ethics in the Real World: Communication with Witnesses," C.L.E. Ethics Seminar, Ass'n S.C. Claimants' Attorneys for Workers Comp. (5/3/02).
- "Lawyers and Paralegals Practicing Law When and Where They Shouldn't," C.L.E. Ethics Seminar, S.C. Bar and South Carolina Ass'n of Ethics Counsel (12/15/01).
- "Proposed Disclosure Rule and Goods Funds Statute in South Carolina," C.L.E. Ethics Seminar, S.C. Bar (8/17/01).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/3/01).
- "Ethical Perils for Family Practitioners: Keeping Your License and Keeping Your Practice," C.L.E. Ethics Seminar, S.C. Bar (12/2/00).
- "Ethical Issues in Workers Compensation Practice," C.L.E. Ethics Seminar, S.C. Workers' Comp. Educational Ass'n, Kingston Plantation, Myrtle Beach, S.C. (10/23/00).
- "The Things That Make Paralegals Indispensable: Technology and the Future of the Practice of Law," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/5/00).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/4/00).
- "The Internet—Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," SC Defense Trial Attorney's Association & SC Claim Manager's Association CLE at Grove Park Inn, Asheville, N.C. (7/29/00).
- "The Internet—Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (4/28/00).
- "The Responsibility of Administrative Law Judges to Control Unethical and Unprofessional Conduct by Lawyers: Ethical Prohibitions, Remedies and Sanctions," ALJ CLE Seminar, Southern States Association of Administrative

- Law Judges (3/17/00).
- "S.C. Appellate Procedure: The New Relationship Between the Supreme Court and the Court of Appeals," Paralegal Continuing Education Seminar, Ass'n S.C. Claimant Attorneys for Workers Comp., Asheville, N.C. (1/22/00).
- "Professionalism: Advertising Ethically Under the Amended S.C. Rules of Professional Conduct," C.L.E. Ethics Seminar, S.C. Bar (1/14/00).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/11/99).
- "Hot Issues in Ethics: Marketing Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (10/29/99).
- "Ethical and Professional Responsibility Issues in Litigation: Discovery Abuse," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (12/12/98).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/8/98).
- "Discovery Abuse: Bane of Professionalism? Ethical Prohibitions & Court-Ordered Sanctions," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/98).
- "*Hedgepath & McCormick* and the Ethics of Ex-Parte Communication with Treating Physicians," Workers Comp. C.L.E. Seminar, S.C.T.L.A. Convention (8/14/98).
- "Legal Ethics for a Multi-State Law Firm," C.L.E. for a Major S.C. Law Firm (8/8/98).
- "Prudent Ethical Conduct after *Hedgepath*," Medical Staff, McLeod Hospital, Florence, S.C. (4/6/98).
- "What is the Effect of *Hedgepath* on Doctors' Duties to Workers' Comp Patients?" S.C. Workers Comp. Educational Ass'n Annual Meeting, Charleston, S.C. (2/22/98).
- "Confidentiality, Privilege, and the Attorney as Witness, Gossip, or Snitch," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (1/10/98).
- "Law Firm Breakups and Departing Lawyers," C.L.E. Ethics Seminar, S.C. Bar and University of South Carolina School of Law (12/13/97).
- "*Hedgepath* & Lawyers' Professional Conduct: Implications in Workers' Compensation Proceedings," C.L.E. Seminar, The Association of South Carolina Claimant Attorneys for Workers' Compensation, Asheville, N.C. (11/14/97).
- "Ethics: Judicial Immunity for Administrative Law Judges," J.C.L.E. Seminar, Chief Administrative Law Judges Conference, Charleston, SC (11/6/97).
- "*Hedgepath* and the Rules of Professional Conduct: Who Can We (and They) Talk to Now?" C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/15/97).
- "Ways to Get in Trouble: Old and New," C.L.E. Ethics Seminar, University of South Carolina School of Law (12/7/96).
- "Ethics for the Modern Lawyer on the Information Superhighway," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/9/96).
- "Mobile Lawyers and Mobile Clients," C.L.E. Ethics Seminar, University of South Carolina School of Law (12/95).
- "Constitutional Restrictions on Regulation of Lawyer Advertising," House of Delegates, S.C. Bar (1/21/94).
- "Ethical Issues Facing Law Firms," C.L.E. Seminar, University of South Carolina School of Law (1/9/93).
- "Ethical Issues in Office Practice," C.L.E. Seminar, University of South Carolina School of Law (12/5/92).
- "Lawyer Television Advertising: A Video Presentation," U.S.C. Law School Faculty Ethics C.L.E. Seminar (10/22/92).
- "The Ethical Dilemma of Corporate Counsel," C.L.E. Seminar, Farm Credit Sys. General Counsels Conference (10/7/92).

- “Lawyer Advertising – The Great Debate,” Moderator, C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/92).
- “Civil Litigation,” in Ethical Issues in Litigation, C.L.E. Seminar, University of South Carolina School of Law (1/11/92).
- “Shareholders' Rights in Disputes with a Corporation and those in Control,” in Planning for Business Corporations: A Guide for General Practitioners, C.L.E. Seminar (1/3/92).
- “Ethical Issues in Civil Litigation,” in Legal Ethics and Professional Responsibility, a Video/C.L.E. Seminar (12/6/91).
- “A Walk Through the New South Carolina Rules of Professional Conduct,” C.L.E., U.S.C. School of Law (1/12/91).
- “Corporate Litigation and Liabilities of Corporations, Directors, Officers, and Shareholders after the 1988 Revision of the South Carolina Business Corporation Act,” in Current Issues in Civil Litigation, a C.J.E. Seminar (4/14/89).
- “Fundamental Corporate Changes and Dissenters' Rights under the South Carolina Business Corporation Act of 1988,” in The New South Carolina Corporation Act, a Video/C.L.E. Seminar (12/16/88).

University and Community Service

- Member, Dean Review Committee for the Dean of the College of Criminal Justice, 2003
- Member, Faculty Manual Revision Committee, Faculty Senate, University of South Carolina, 1998-1999
- Parliamentarian, University of South Carolina Faculty, 1997-2004
- Member, Steering Committee, University of South Carolina Faculty Senate, 1997-2004
- Faculty Senator, University of South Carolina, 1983-1985, 1995-1998, 2000-2003
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1995-1996
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1982-1983 (won Regional Competition)
- Faculty Advisor, National Moot Court Competition Team, University of South Carolina School of Law, 1980-1981
- Committee Chairman, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1996-2003
- Scoutmaster & Founder, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1992-1996
- Assistant Scoutmaster, Committee Chairman, Committee Member, BSA Troop 388, Windsor United Methodist Church, Columbia, SC 1986-1992
- Junior Warden, Vestry, St. David's Episcopal Church, Columbia, SC 1984-1987
- Chorister, Good Shepherd Episcopal Church, Columbia, SC 1999-2004
- Chorister, St. David's Episcopal Church, Columbia, SC 1984-1998
- Chairman, Christian Education Committee, St. Michael and All Angels Episcopal Church, Columbia, SC 1981-1983
- President, Richland Northeast High School Parents, Teachers, Students Organization, Columbia, SC 1992-1997
- Member, Richland School District Two Strategic Planning Committee, Columbia, SC 1995-1996
- Member, Richland School District Two New High School (Ridge View) Planning Committee, Columbia, SC 1993-1994

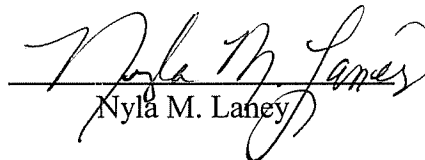
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